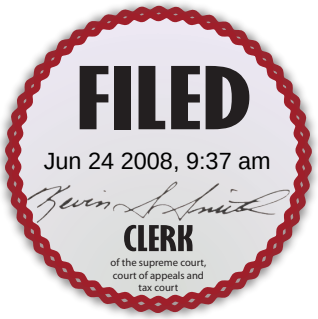

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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF A.M. and A.L., Minor Children, and Their Mother, K.M.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0712-JV-1091
MARION COUNTY DEPARTMENT OF CHILD SERVICES AND CHILD ADVOCATES, INC.,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Larry Bradley, Magistrate
Cause No. 49F09-0601-JT-1621 & 49D09-0708-JT-36238

June 24, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Kennietra M. ("Mother") appeals the involuntary termination of her parental rights, in Marion Superior Court, Juvenile Division, to her children, A.M. and A.L. Mother challenges the sufficiency of the evidence supporting the juvenile court's judgment, claiming that the Marion County Department of Child Services ("MCDCS") failed to prove by clear and convincing evidence that there was a reasonable probability the conditions resulting in the children's removal and continued placement outside her care would not be remedied. We affirm.

Mother is the biological mother of A.M., born on December 27, 2003, and A.L., born on December 8, 2005.[1] The evidence most favorable to the juvenile court's judgment reveals that, on June 16, 2004, the MCDCS filed a petition alleging A.M. was a child in need of services ("CHINS"). The CHINS petition alleged that Mother was not providing A.M. with an adequate level of care and supervision, in that she was leaving then six-month-old A.M. unattended. The petition also alleged that Mother had an ongoing CHINS action with another child, An.M., and was not compliant with home-based counseling and drug services in that case. Additionally, the MCDCS was concerned that Mother was smoking marijuana in A.M.'s presence. On September 3, 2004, following a fact-finding hearing on the CHINS petition, A.M. was determined to be a CHINS and made a ward of the MCDCS. On October 5, 2004, following a dispositional hearing, A.M. was formally removed from Mother's care, pursuant to a dispositional decree, and the juvenile court entered a Participation Decree directing

[1] Mother is also the biological mother of An.M. Mother's parental rights to An.M were terminated during the pendency of the underlying CHINS cases.

Mother to, among other things: (1) obtain and maintain a legal source of income adequate to support all the household members, including A.M.; (2) secure and maintain suitable housing; (3) complete a parenting assessment and any resulting recommendations including parenting classes and home-based counseling services; (4) submit to a drug and alcohol assessment and any resulting treatment recommendations; (5) submit to random drug screens; (6) refrain from the use of all non-prescription drugs; and, (7) exercise regular visitation with A.M. as recommended by the counselor or family case worker.

A.L. was born on December 8, 2005, and the MCDCS filed a CHINS petition as to A.L. on January 2, 2006, because Mother had two other children who were wards of the State and she had not been compliant with court-ordered services and treatment in either case. Additionally, the MCDCS alleged that Mother had failed and/or missed several drug screens. On April 20, 2006, following a fact-finding hearing, A.L was determined to be a CHINS, and the juvenile court proceeded to disposition. Mother was thereafter ordered to complete virtually identical services as in A.M.'s case, with the addition of a psychiatric evaluation.

In the meantime, on January 13, 2006, the MCDCS had filed a petition for termination of Mother's parental rights to A.M. A fact-finding hearing on the termination petition was later set for October 17, 2006. However, on October 12, 2006, the MCDCS filed a motion to continue because Mother was participating in home-based counseling and doing well. In an attempt to allow Mother more time to complete home-based services, the MCDCS filed additional motions to continue the termination hearing

on December 8, 2006, and on February 26, 2007, as did Mother without objection from the MCDCS, on April 13, 2007.

On August 20, 2007, the MCDCS filed a petition to terminate Mother's parental rights to A.L. The two termination cases were consolidated on September 5, 2007. A two-day fact-finding hearing was held on November 7 and 8, 2007. Following the hearing, the juvenile court took the matter under advisement. On November 13, 2007, the juvenile court entered its judgment terminating Mother's parental rights to both A.M. and A.L.

Mother asserts on appeal that the juvenile court's judgment terminating her parental rights to A.M. and A.L. is not supported by clear and convincing evidence. This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

Here, the juvenile court made specific findings in ordering the termination of Mother's parental rights. Where the court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile court's unique position to assess the evidence, we will set aside

the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied; see also Bester, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

In order to terminate a parent-child relationship, the State is required to allege that:

(A) [o]ne (1) of the following exists:

> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * * * *
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (1998 & Supp. 2007). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the facts that both A.M. and A.L. were removed from her care for the requisite amount of time pursuant to the statute, that termination was in the children's best interests, or that the MCDCS had a satisfactory plan for the care and treatment of the children, namely, adoption. Mother does, however, allege that the MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability that the conditions resulting in the children's removal and continued placement outside of Mother's care would not be remedied. Specifically, Mother claims that "contrary to the trial court's finding (finding number 22), the evidence presented showed that [Mother] had greatly improved her ability to parent her children." Appellant's Br. at 4. Mother therefore concludes that "without that finding, the conclusion that the conditions resulting in placement outside the home would not be remedied is not supported by findings . . . [and] [w]ithout support for that conclusion, the judgment terminating [Mother's] parental rights is contrary to law." Id. at 8.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children *at*

the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. (Emphasis added.) Additionally, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The juvenile court may also properly consider the services offered to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, the MCDCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there was a reasonable probability that the conditions resulting in the children's removal and continued placement outside Mother's care would not be remedied, the juvenile court made the following pertinent findings:

> 6. Between October of 2004 and January of 2006, Mother was unwilling to complete services and did not show an ability to parent. Mother's parental rights with her oldest child, [An.M.], were terminated during this time.
>
> * * * * *
>
> 9. New referrals to intensive outpatient substance abuse treatment, screens, parenting classes and a parenting assessment were made.

10. Because of Mother's behavior, the family case manager at the time, Shanise Abrams, referred Mother for a psychological evaluation. Dr. Mary Papandria conducted psychological evaluations on Mother in April of 2006, and in August of 2007. The exam consisted of an interview, mental and intelligence exams, and personality measures.

11. Dr. Papandria initially diagnosed Mother with cognitive deficits of having a low average intelligence quotient, a borderline verbal quotient and attention difficulties. In addition, Mother was diagnosed with Major Depressive Disorder, recurrent, and Anxiety.

12. After the second evaluation, Dr. Papandria noted no progress in Mother's condition. Mother's depression was worse and she was starting to exhibit suspicion and paranoia.

13. Dr. Papandria[] recommended, from both evaluations, that Mother seek a psychiatric evaluation to obtain medications for her depression and anxiety.

14. Due to learning difficulties and long standing issues from childhood, it was recommended that Mother engage in individual therapy, without which she would not be able to appropriately cope with housing[,] employment[,] or parenting. Dr. Papandria suggested the therapy be weekly for two to three years to learn and utilize new skills and help rid Mother of old issues.

15. Mother has not received medications and attended one orientation session for therapy at Galihue Mental Health on October 10, 2007. She did not feel the program to be correct for her although MCDCS's referral was to Galihue for individual therapy sessions.

16. Mother was referred to home[-]based services four times, one being a transfer. The third home[-]based service was commenced in August of 2006 with goals of Mother completing her drug screens, obtaining higher income skills, creating a support system within her neighborhood, keep[ing] appointments and reunify[ing] with [A.L.]. Although Mother still had trouble with paperwork, she had maintained clean drug screen[s][,] developed a support system with one person[,] and was seeking employment. Mother was given trial in[-]home visitation with [A.L.].

17. Home based service was transferred to another provider after March of 2007 to effectuate unsupervised visits between Mother and [A.M.].

18. Problems arose at the start of the unsupervised visitation schedule. Mother failed to make the first appointment.

19. On the second visit and third appointment[s], Mother had family members and a neighbor with her, although home[-]based services rules not allowing visitors who had not been pre-approved had been explained to Mother. Mother became highly agitated during the appointments and tore up the rules at the third appointment, saying "she was not going to follow the rules."

20. As a result of Mother's agitation, she was referred for additional substance abuse screens. She tested positive for marijuana in July of 2007.

21. Because of Mother's previous problems with outbursts and not being willing to follow rules, a positive screen, and missing three out of five meetings with home[-]based services, in home temporary placement with [A.L.] and unsupervised visitation with [A.M.] were terminated. Unsupervised visitation would have been started again upon three negative drug screens, but this has not happened.

22. Mother has been in services toward reunification with a child since 2002. She has failed to obtain medication and therapy for her mental health issues. She has also been inconsistent with services and has failed to complete home[-]based services. Although Mother was only age sixteen when she first came into contact with MCDCS, there has been little improvement in her ability to parent since. Given the history of the past five years, there is a reasonable probability that the conditions that resulted in the removal of [A.L.] and [A.M.] will not be remedied.

Appellant's Appendix at 14-16. The juvenile court then concluded that there was a "reasonable probability that the conditions that resulted in the removal and placement (of the children) outside the home will not be remedied." Id. at 17.

Our review of the record leaves this Court convinced that ample evidence supports the juvenile court's findings and conclusion set forth above, including finding number twenty-two. At the time of the termination hearing, Mother was unemployed, did not have stable housing, and was not participating in individual counseling. Additionally, Mother's visitation with A.M. had become "sporadic." Tr. at 5. The record further reveals that, other than a positive screen for marijuana in July 2007, Mother had refused to submit to random drug screens after they had been reinstated due to Mother's irrational behavior observed during a home visit, until several weeks before the termination hearing. Moreover, Mother's home-based counseling services had been discontinued approximately one month prior to the termination hearing "due to noncompliance." Id. at 7.

Although we acknowledge Mother did successfully engage in services offered by the MCDCS for a period of time during the approximately three years she was involved with MCDCS after A.M. was determined to be a CHINS, and had even progressed to the point where A.L. was temporarily returned to her care, home-based counselor Emily Short acknowledged that the visits had "gone bad" once the additional responsibility of unsupervised visits with A.M. were added. Tr. at 84. When asked whether she felt Mother was committed to regaining custody of her children, Short responded, "I did have some concerns that she might possibly be sabotaging the reunification. Because of the added responsibility. Just based on the behaviors that I had seen during those visits." Id. at 101.

Similarly, when home-based counselor Doug Barnes was questioned as to whether he had ever felt comfortable in placing both A.L. and A.M. in Mother's care at any point during his home-based counseling of Mother, Barnes responded, "No. I did not feel comfortable doing that." Id. at 72. When asked "why" he felt that way, Barnes explained, "Because [Mother] did not provide me evidence that she could successfully maintain the children in the home." Id. at 73. Barnes further testified that he had to close Mother's home-based counseling services as unsuccessful because she "no-showed three times for home[-]based. She never made any attempt to reschedule her missed appointments. She did not respond to a letter I sent. . . . [and] she did not respond to messages I left for her with her mother." Id. at 72.

Also significant is the fact Mother was not attending individual counseling, despite Mother's admission at the termination hearing that she was aware of the fact she was supposed to be doing so. Dr. Mary Papandria, a psychologist at Psychological Labs of Indianapolis, performed two separate psychological evaluations of Mother, one in April 2006 and one in April 2007. Dr. Papandria testified that "[n]othing specific" had changed since Mother's first evaluation in 2006. Id. at 47. When questioned as to whether Mother had any psychological health issues, Dr. Papandria responded:

> Yes. . . . The diagnosis that I obtained from my interview, the mental status exam and the psychological testing, revealed the presence of a major depressive disorder. I felt that it was recurrent. . . . I felt the severity at the time I saw her was severe and although she wasn't showing full blown psychotic features, there was some evidence of paranoia. So I felt her depression at that time was fairly severe. She also demonstrated the presence of an anxiety disorder. . . . I also diagnosed her with a history of marijuana abuse. . . . I also diagnosed her with some continuing concern

> about personality disorder features. Mainly kind of paranoid avoidant, depressive, schizotypal features.

Id. at 44-45. Dr. Papandria further testified that she felt Mother should be "seen by a . . . psychiatrist for medication needs" and that, as she had previously recommended in 2006, Mother "really, really needs counseling" at least once a week for two or three years because her problems were "significant[,]" they were not going to go away "by themselves[,]" and without counseling, she felt Mother would be unable to cope with day to day life such as "getting a job[,]" "[k]eeping housing[,]" and "[p]arenting her children." Id. at 46.

Finally, we observe that both the MCDCS case manager, Shanise Abrams, and the Guardian ad Litem ("GAL"), Linda Pryor, also recommended termination of Mother's parental rights to A.M. and A.L. In so doing, Abrams stated that she recommended termination due to Mother's "inability or unwillingness to show her ability to parent the children." Id. at 141. Pryor's testimony echoed that of Abrams. In explaining the basis of her recommendation, Pryor stated:

> Well[,] I've been on this case for a year and a half and I've reviewed documents from before I took over the case. I've always been concerned that mom just will not take responsibility for the fact that her children aren't with her. I was there visiting when [A.L.] was in the in-home trial and when [A.M.] was coming over for visits, and mom was just so close to being able to help this situation with her and her children. And then all of a sudden, things happened. And when you talk to mom, it's, 'Well somebody else did it.' 'I didn't do it.' You know[?] 'I didn't get in the car with a man that abused me.' . . . 'I didn't choose not to take drug screens.' 'Somebody else didn't give me a referral.' 'I didn't choose not to show up for therapy.' . . . It just doesn't seem possible that without long term help, mom is gonna . . . change that."

Id. at 172. Pryor went on to testify that the children need permanency and that she "absolutely" felt that giving Mother more time to complete services would not be in the children's best interests. Id. at 176.

Based on the foregoing, we conclude that the juvenile court's findings set forth previously, including finding number twenty-two that stated there was a reasonable probability the conditions resulting in the children's removal from Mother's care and custody would not be remedied, are supported by clear and convincing evidence. "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Since the time of A.M.'s removal, approximately 3 years have passed and Mother still has not completed services. Mother therefore remains unavailable to care for her children. It is unfair to ask A.M. and A.L. to continue to wait until Mother is willing and able to get, and benefit from, the help that she needs. See also In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). Accordingly, the judgment of the juvenile court terminating Mother's parental rights to A.M. and A.L. is hereby affirmed.

Affirmed.

NAJAM, J. and DARDEN, J. concur